

## Four pieces on repeal

Enright, Mairead

DOI:

[10.1177/0141778919897583](https://doi.org/10.1177/0141778919897583)

License:

Other (please specify with Rights Statement)

*Document Version*

Peer reviewed version

*Citation for published version (Harvard):*

Enright, M 2020, 'Four pieces on repeal: notes on art aesthetics and the struggle against Ireland's abortion law', *Feminist Review*, vol. 124, no. 1, pp. 104-123. <https://doi.org/10.1177/0141778919897583>

[Link to publication on Research at Birmingham portal](#)

### **Publisher Rights Statement:**

This is a post-peer-review, pre-copyedit version of an article published in *Feminist Review*. The definitive publisher-authenticated version Enright, M. (2020). Four Pieces on Repeal: Notes on Art, Aesthetics and the Struggle Against Ireland's Abortion Law. *Feminist Review*, 124(1), 104–123. <https://doi.org/10.1177/0141778919897583> is available online at: <https://doi.org/10.1177/0141778919897583://journals.sagepub.com/doi/full/10.1177/0141778919897583>

### **General rights**

Unless a licence is specified above, all rights (including copyright and moral rights) in this document are retained by the authors and/or the copyright holders. The express permission of the copyright holder must be obtained for any use of this material other than for purposes permitted by law.

- Users may freely distribute the URL that is used to identify this publication.
- Users may download and/or print one copy of the publication from the University of Birmingham research portal for the purpose of private study or non-commercial research.
- User may use extracts from the document in line with the concept of 'fair dealing' under the Copyright, Designs and Patents Act 1988 (?)
- Users may not further distribute the material nor use it for the purposes of commercial gain.

Where a licence is displayed above, please note the terms and conditions of the licence govern your use of this document.

When citing, please reference the published version.

### **Take down policy**

While the University of Birmingham exercises care and attention in making items available there are rare occasions when an item has been uploaded in error or has been deemed to be commercially or otherwise sensitive.

If you believe that this is the case for this document, please contact [UBIRA@lists.bham.ac.uk](mailto:UBIRA@lists.bham.ac.uk) providing details and we will remove access to the work immediately and investigate.

## Four Pieces on Repeal: Notes on Art, Aesthetics and the Struggle Against Ireland's Abortion Law

*We used art as a gavel to enact the reform of laws, a scissors to cut a hated section out of our constitution, as an antidote to and transformation of the female sufferings of the past.*

Áine Phillips – *Future States No. 3*<sup>1</sup>

**Comment [A1]:** Throughout: inconsistent use of single and double quotation marks—needs to be put in style

**Comment [A2]:** Cite in bibliography rather than footnote?

Repeal articulated new relationships between law, reproduction and the political in Ireland. Art was often used to document the injustices worked by the 8<sup>th</sup> Amendment (Cahill, 2016; Clancy, 2014; Flynn, 2018; My Name is Saoirse, 2018; Kearney, 2014; Terminal Short Film, 2016; Wrongheaded, 2016; Waking, 2014). During the Repeal campaign, however, art also became a means of challenging prevailing legal common sense and imagining law otherwise. I am an Irish legal scholar with an interest in social movements and legal mobilisation. I was active in Repeal and in the referendum campaign to repeal the 8<sup>th</sup> Amendment, primarily as a member of the public legal education project, Lawyers for Choice. Through that activity, I became interested in the transformations of popular legal discourse that characterised the Repeal campaign. Artists' work Though not the only or most prominent mode of shifting that discourse it seemed to me that artists' work was distinctive and demanded attention.

In this article, I use Rancière's work on aesthetics and politics to situate artistic contributions to Repeal within emerging Irish feminist legal discourses. This article begins, in the first section, by sketching the prevailing legal consensus constructed around abortion in Ireland in the years before the vote to remove the Eighth Amendment from the constitution. It frames that consensus in terms of the 'police distribution of the sensible' which determined who could speak to law and on what terms. The article goes on to analyse a number of artistic responses to that discourse in terms of dissensus. Rancière writes about two modes of dissensus that can manifest through art as aesthetic practice. First, the 'aesthetics of politics' refers to the capacity to disrupt the distribution of the sensible that shapes the community, making room for otherwise excluded subjects to be heard and seen within it (Rancière, 2009, p.25). I use this concept to analyse two exemplary works: the Artists' Campaign to Repeal the Eighth Procession at the 38<sup>th</sup> EVA International biennial of contemporary art in

---

<sup>1</sup><http://www.thisisliveart.co.uk/blog/future-states-by-aine-phillips-no.3/>

Limerick in 2018 and Aches' mural of Savita Halappanavar erected in Dublin in 2018. I show how these works articulated new relationships between women and Irish law; women as the 'part of no part' emerged not as mere bodies to which law was applied, but as its potential authors. Second, Rancière's 'politics of aesthetics' denotes art's particular ability to suspend the ordinary coordinates of sensory experience in ways which go beyond the articulation of new subjectivities within the prevailing legal order, and give a glimpse of a new dissensual legal order, however precarious or fleeting (Rancière, 2009, p.25). I use the 'politics of aesthetics' to examine two artistic interventions: the 2016 guerrilla art campaign *Bodies Awakened*, and Jesse Jones' 2017 work *Tremble, Tremble*. I argue that these works suggest the possible future founding of new legal orders, different from the one then and now in force.<sup>2</sup> The art of Repeal showed the outlines of a subaltern or 'minor' jurisprudence (Goodrich, 2002, p.2); a vibrant, dispersed and woman-centred productive power in place of the cautious moribund legalism which has characterised Irish state responses to abortion.

**Comment [A3]:** Change to four pieces not five

### The Police Order of the 8<sup>th</sup> Amendment

In Ireland before Repeal, abortion was the subject of a specific, exceptional and carefully-guarded juridical. Arguably, aspects of it survived Repeal (Enright, 2019; de Londras 2019). What follows is not a comprehensive discussion of developments in Irish abortion law before and after May 2018, but a sketch of that police order's two central pillars.

**Comment [A4]:** Missing full stop.

First, we can speak of origins. In state discourse, the Eighth Amendment represented a careful democratic settlement reflecting the best of the nation's constitutional values. The project of maintaining the amendment was defended as an alternative to destructive division. In litigation before the European Court of Human Rights, for example, the state argued that the Eighth Amendment reflected "profound moral values, deeply imbedded in the fabric of Irish society, and arrived at through a wholly democratic process involving, all in all, three referenda" (*A, B and C v. Ireland* [2010] ECHR 2032). Similarly, before the United Human Rights Committee in 2014 the Minister for Justice reported that the Amendment "reflects a nuanced and proportionate approach to the considered views of the Irish electorate on [a] profound moral question" (Fitzgerald, 2014). The police order is associated, though not exclusively, with the institutions of state, particularly the law-making branches. This account of the abortion law repressed its antagonistic origins in Catholic institutional power and nationalist activism (Fletcher, 1998), and occluded the state's failure, until 2018, to offer a referendum to liberalise the law (McAvoy, 2013). It also maintained a legal centralist view of law as constituted by formal legal processes,

**Comment [A5]:** Consistency re: 8<sup>th</sup> / eighth required as varies over the text

<sup>2</sup> The four pieces considered here are, of course, very different from one another; ranging from street art to site-specific performance, to film installation. What they have in common, for the purposes of this argument, is that they were deliberate interventions in the Repeal campaign, and that they were jurisgenerative; insisting on new understandings of women's lives under the law, and in turn, of how that law might be remade.

while holding grassroots legal activism at arms' length. In the years before the government agreed to hold a referendum, pro-choice demands were portrayed as undemocratic, careless, ill-considered, aggressive, and disrespectful to the popular will which gave the law its legitimacy (O'Regan, 2014). Even once it was accepted that pro-reform proposals should receive a hearing in state spaces, the notion that they should be counter-balanced by efforts to preserve the Amendment prevailed in processes such as the Citizens' Assembly (Enright, 2018a).

Second, we can speak of law-makers. While the law enacted under the 8<sup>th</sup> Amendment functioned, abortion-seeking women - compelled to travel (Calkin, 2019) or to terminate abortions illegally and in secret - were largely disappeared from political view (Chan, 2018). It was not that abortion-seeking women were never included in legal debates, but that they were only included on certain terms; when they could abstract themselves, or be abstracted, from their embodied context and make their case in terms amenable to the dominant legal rationality. Although women's abortion stories were told with greater frequency during the Repeal campaign, when these testimonies entered formal legal spaces, they were constructed as stories of victimhood or tragedy. Even when women's deaths and suffering were acknowledged as deserving of attention, they were moulded as a problem to be addressed by legislators. Victimhood denoted women's vulnerability – their status as objects needing protection, not their authority to change the normative order (Berlant, 2000, p.58). Mass subaltern pain, as Lauren Berlant has observed, may induce state performances of regret and mourning, but is at the same time consistent with a state that insists its citizenry 'eats its anger, [and] makes no unreasonable claims on resources or control over value' (Berlant, 2000, p.43). Debates about law reform in parliament and in the media showed that, while abortion-seeking women's pain could be acknowledged, their experiences were not accepted as a fundamental source of disruption to the legal order. Rather they were always intelligible to and reparable by law (Berlant, 2000, p.56). The police order adapted to women's interventions – in particular by making space for a referendum, but maintained the fundamental demand to categorise abortions as legitimate or illegitimate and to set terms which women could be compelled to remain pregnant in the interests of the common good (Berlant, 2000, p.53). One example of the conversion of women's political agency into a 'scream of pain' is in the representation of disobedient use of 'the abortion pill'. In Repeal protest, the abortion pill often signalled women's ability to undermine the prevailing law in obtaining abortions at home. Women experienced abortion pill use as empowering, if precariously so (Sheldon, 2018). In legislative discourse, by contrast, the act of taking abortion pills at home became primarily a practice of victimhood; dangerous and alienating (Varadkar, 2017). Women's political interventions were also frequently reduced to 'screams of rage'. Feminist oppositional discourses – whether based in international human rights or subaltern politics - were often marginalised, disciplined or ignored in institutional spaces (de Londras, 2018). For a long time, it appeared as though Irish abortion law could not be made to respond to women's suffering.

Simultaneously, the ordinary experimentation, improvisation and gradual adaptation expected in other areas of law – law’s essential responsiveness (Fitzpatrick, 2001, p.6) – was absent, if not impossible, within the police order (de Londras, and Enright, 2018, pp.15–18). It seemed taken for granted that abortion law was incapable of radical change without significant risks. Any change was understood to require slow, careful deliberation, generating a replacement consensus acceptable to ‘middle Ireland’ (Coyne, 2016; O’Halloran, 2016). That deliberation should take place in public, but only in select institutions, notably the Citizens’ Assembly and the Joint Oireachtas Committee on the Eighth Amendment. As the process of deciding the new abortion law’s contents quickened, governmental legal discourse around abortion was marked by a fundamental refusal of law’s own indeterminacy. It was riven with concern for certainty; manifesting eventually in the project of finding a text to replace the Eighth Amendment that would resolve complex political and medical problems, providing the relief of closure and finality (McCarthy, 2017; Leahy, 2017; Irish Legal News, 2017; Whelan, 2017). Ensuring ‘legal certainty’, here, was primarily a matter of reassuring doctors, politicians, or the voting populace. This insistence on purportedly civil, rational legal deliberation was also an exclusion of activist feminist legal discourse. Pro-choice TDs were warned that their demands for legal change would ‘convulse’ the country (Kelly, 2016; O Cionnaith, 2016; RTE, 2015; Fischer, 2012). Insofar as the violence of law-making was acknowledged, the risk was to society and not to the women governed by law. The qualities of stability and civility attributed to those who wanted to maintain the law as it was, or to carefully excavate a ‘middle ground’ alternative were opposed to the passion and ‘shrillness’ of women demanding change (Cullen, 2016; Lynch, 2016). The Taoiseach, later solidified this position, attributing the positive referendum outcome not to women’s vociferous protest, but to a ‘quiet revolution’ (Heffernan, 2018).

**Comment [A6]:** Explain or write out

**Comment [A7]:** Comma?

**Comment [A8]:** Something wrong about this sentence

In Rancière’s terms, when it came to abortion and the legal order, abortion-seeking women were ‘the part of no part’. For Rancière, societies are defined by inclusion and exclusion in the act of governing; some people have ‘a part’ in those processes and others, ‘the part of no part’, do not (Rancière, 1999a, p.9; 2013, p.3). This exclusion was a denial of abortion-seeking women’s equality. Rancière understands equality as the absence of any pre-emptive limitations on who may participate in governing, whereas every legal order has ‘rules of rule’ that determine who counts as a full political subject and who – ‘the part of no part’ - does not. Equality is never a given under law. These exclusions are not only set down in formal law; they are part of a shared discourse or common sense; the ‘distribution of the sensible’ (Rancière, 2013, p.7; Rancière, 2012, p.215) which determines what is speakable or unspeakable, visible or invisible, possible or impossible (Rancière, 1999a, p.29; Rancière, 2006, p. 12). In prevailing discourses of Irish abortion law, women’s interventions were recast as screams of pain or rage. Rancière similarly notes the claims of the ‘part of no part’ are reduced to mere noise; screams of pain or rage (Rancière, 1999a, p.22). Women’s claims were also silenced by the insistence that the law reflected national consensus and could only be changed through national consensus. For Rancière, consensus is synonymous with ‘censorship’ and de-politicisation; with creating conditions in which some questions become

**Comment [A9]:** Of?

**Comment [A10]:** Repetition between sentences but also w earlier para--?

impossible even to pose (Rancière, 1999, p. 115; Rancière 2015, 42). Consensus ensures inequality because it seems to make dissent unnecessary; it claims to account for the whole citizenry without exception, and thus conceals those who disagree. Mainstream law-making processes, in Rancièrian terms lack any inherent legitimacy. In the course of Repeal, they were part of the 'police order', which upheld the prevailing exclusionary distribution of the sensible, preserving the illusion that only the prevailing juridical arrangements are possible, suppressing resistance (Rancière, 1999a, p.28).

**Comment [A11]:** Seems an important sentence in Brexit Britain : /

**Comment [A12]:** ? not clear who this refers to

### **The Aesthetics of Politics: Women as Law's Makers.**

Artistic interventions in Repeal generated a multiplicity of sites from which this dominant legal discourse could be questioned (Mouffe, 2013, p.104). In particular, artists sought to make abortion-seeking women visible as a community of experience, and collaborated in a wider wave of personal abortion narrative which drove at 'resensitising fractured consciousness' in the hopes of provoking action (Martin, 2018). By making women's repressed experience appear over and over in public space, some artistic interventions disturbed Irish law's police order, preventing women's interventions from being enfolded neatly into dominant legal discourse. Art can unsettle hegemony, exposing the power relations and exclusions that maintain the legal order as it is. Chantal Mouffe writes of artistic activism in terms of 'counter-hegemonic interventions whose objective is to disrupt the smooth image that [the prevailing order] tries to spread, thereby bringing to the fore its repressive character' (Mouffe, 2013, p.98). Rancière calls this the 'aesthetics of politics'; art's capacity to enact dissent from the prevailing juridified order of domination. Politics at once breaks and reconfigures the prevailing distribution of the sensible,<sup>3</sup> doing so in the name of equality; the entitlement of each and every one to occupy the place of power. Politics happens when 'the part of no part' make themselves heard in a performance of dissensus (Rancière, 2015, p.67). In dissensus, the 'part of no part' verify their equality with others whose entitlement to shape the legal order is already beyond question (Rancière, 1991 p.137). They intervene in the established system of meanings, pointing out its lacks and contradictions, questioning it and by that questioning insisting on their equality with others subjects of right (Rancière, 1999 p. 49). Art enables this dissensus by making 'visible that which was not visible, audible as speaking beings they who were merely heard as noisy animals' (Rancière, 2011, p.4).

**Comment [A13]:** narratives

### A Procession in Limerick

The Repeal movement used processions, protest and strikes to manifest dissensus in the streets (NicGhabhann, 2018). One month before the referendum vote, as part of the 38<sup>th</sup> EVA International festival, members of the

<sup>3</sup> Many critics of Rancière argue that he reifies the political as dramatic and ruptural. For an alternative reading see (Norval, 2012) and (Sparks, 2016 at p. 432)

Artists' Campaign to Repeal the 8<sup>th</sup> Amendment enacted a street procession in Limerick. Volunteers and performers dressed in mourning black, marched solemnly to drumbeats and music with processional banners and Rachel Fallon's "aprons of power" decorated with political messages (Artists Campaign Repeal 8th Procession, 2018). The procession began at the site of Limerick's last Magdalene laundry; a place of incarceration for women who had transgressed the Catholic state's moral norms (Glynn, 2011). In some ways, the procession reclaimed the religious parades that Magdalene women were forced to participate in (their only appearance in public, a ) and repurposed them for an intervention into the 8<sup>th</sup> Amendment's police order. As such, participants foregrounded a different origin story for the abortion law; instead of allowing it the prestige of form and deliberation, they associated it directly with the incarceration and shaming of women in the laundries. The style of the banners that participants carried drew on those used by religious sodalities and fraternal orders (Godson, 2017). Alice Maher, speaking at the beginning of the procession, pointed out that it would allow women carrying messages of reproductive justice to walk down the streets which were ordinarily forbidden to their forebears incarcerated in the laundry: "We carry them with us through the streets of the city from which they were barred". Explicitly drawing the link between the 8th Amendment and the 'dark and judgmental past' of the laundry, she exhorted those marching to display pride and refuse shaming, "rejoicing in our power to change what is wrong". The banners featured imagery commenting on women's object status under law; for example, a judge and bishop playing tug -o-war with a woman's naked body, or hands of justice comparing and weighing the lives of man and woman (Godson, 2017) (Artists Campaign Repeal 8th Procession, 2018). Others, however, posited a different female subjectivity. Women's eyes were a repeated motif across the banners, signifying not the surveillance of women by the state, but a reversed gaze; a female populace watching its law-makers and holding them accountable (Godson, 2017) and, perhaps, a justice that is not blind (Resnik and Curtis, 2011, pp.62–75). One apron bore the image of an eye and the slogan "Under the Law, Freedom". This decentralised demand for a law accountable to women was set a wider context of bodily defiance, pride and pageantry.

Comment [A14]: remove 'a'?

Comment [A15]: insert semi-colon, remove brackets

In Rancière's terms, this procession is an act of dissensus. Women, as the 'part of no part' named a 'wrong' underpinning the Amendment's police order. A 'wrong' is one of the exclusions or suppressions on which the police order depends for persistence (Rancière, 2015, p.140). It is simultaneously a denial of the fundamental equality of every person, understood as everyone's equal capacity for political speech (Rancière, 1995, p. 22). In Ireland, even before the referendum, much was made of the equality of men and women. In formal legal discourse women were voters, citizens, legislators. At the same time, it was taken for granted that women's bodies should be the subject of an exceptional legal discourse. Through its emphasis on consensus and national will as the sources of abortion law's legitimacy, the police order disappeared that inequality. The 'wrong' named in the procession is this exclusion of women, which the procession connects to the older religious and moral history of Magdalene times. The procession was political because it brought the police order of the

Amendment face to face with its own exclusionary logic (Schaap, 2016, p.219). It made women visible, as inheritors of past gender-based violence, in a space rich with the imagery and language of legal control, incarceration and discipline. Importantly, the procession did not ask for women's admittance to existing spaces within the Amendment police order; as victims screaming in pain, for example. The procession is an act of disidentification; women repudiated their assigned place in the police order. Instead, the procession insisted that women's words were heard not as mere noise, but as self-authorising legal statements rooted in conceptions of transformation and accountability. The intervention of the 'part of no part', however, is not a demand for 'voice' within the existing limited juridical modes of deliberation. The 'part of no part' is not simply moving between established spaces in the police order (Rancière, 2001, p.22); the space of the punished Magdalene woman and the rational deliberative law-maker. The procession did not merely invalidate women's prior allocation within the police order; it demanded a new partition of political space. So, women's transformative legal agency, as performed in the procession, is 'an equalization without a compliance' (May, 2008, p.50). The procession made visible a new form of legal agency, uncompromisingly embodied but not abjected, attentive to religious and patriarchal power, and proudly embedded in older national and local legal histories, often ignored in dominant legal discourse.

### A Mural in Dublin

A sense of the possibility, and limitation, of the 'part of no part' is also enveloped in Aches' mural of Savita Halappanavar's smiling face, painted on a hoarding on Richmond Street, Portobello, on the south side of Dublin city (Podcast with Aches, 2018). Savita Halappanavar's death was a recognised turning point for Irish abortion law (Lentin, 2013). It was reported just as the Oireachtas was beginning to debate the Protection of Life During Pregnancy Act 2013. She died of sepsis in a Galway hospital having been refused a termination to bring an inevitable miscarriage to an end because the foetus' heart was still beating. Her doctors' refusal of care exposed the dangerous 'chilling effects' of the near-total constitutional and criminal ban on abortion. It galvanised a pro-choice movement that considered her story emblematic of the vulnerability of all women, even willing mothers, under that ban (Holland, 2018b). Her death was so influential in raising public awareness of the need for reform that, for a time after the referendum, it was suggested that the new abortion legislation would be called 'Savita's Law' (Sherwood and O'Carroll, 2018). Nevertheless, for years, her death was an uncomfortable reminder of the cracks emerging in the legal order; government figures warned Repeal campaigners that her death was no reason to speed up legal change. Since 2012, Savita's image has repeatedly been used in pro-choice campaigning materials. Aches' mural appeared on Richmond Street on the day before the referendum vote and remained on its original site for a week. Super-imposed over the now-familiar image of Halappanavar's face was a single word: "Yes". The mural posited her as the reason for the referendum and her death as the reason to

Comment [A16]: use her name?

Comment [A17]: This probably needs a cite



vote “Yes” to legal change. This is how the image was taken up in public. All day on May 25<sup>th</sup>, the day of the referendum, before the result was known, voters began gathering at the mural, crying, hugging, leaving flowers, campaign badges and candles, along with hundreds of “notes to Savita” on paper branded with the logo of the Together for Yes campaign (Holland, 2018a).

The spontaneous gatherings at the mural demonstrated women’s insistence on a right to life and health, equal to that enjoyed by men, but then not yet recognised by law. It also forced a new subjectivity into the legal order. Savita, in the mural is irreducible to the circumstances of her death under the law; this is more than a cry of pain ignored by state law-makers, Women’s responses and notes on the mural returned to Savita as the originator of a new law and agent of legal change. The notes, fixed to the mural itself, bore simple messages to her: apologising to her, thanking her for catalysing the movement for abortion law reform and, crucially, dedicating their votes to her (Notes to Savita, 2018).

“For Savita, you made us fight. Never again” (Notes to Savita, 2018)

“You closed your eyes and opened everyone else’s” (Notes to Savita, 2018)

“We celebrate the fact that women will be able to have more choice over their body but when you come back here, it brings it back to the fact that a woman died” (Neville, 2018)

“Savita, because you slept many of us woke. Tomorrow we’ll awake to an Ireland less ashamed. Because you came to us our women can now stay with us when they need us. Thank you. Rest in peace.” (Holland, 2018)

If successful, the appearance of the ‘part of no part’ can articulate new political subjectivities – allowing excluded constituencies to be seen in entirely new ways - and ensuring that they are counted and recognised within the communal order (Rancière, 1999b, p.42). Street art is often used to convey messages which have a difficult relationship with law. Another mural; Maser’s popular ‘Repeal’ logo was twice removed from the wall of the Project Arts Centre in Temple Bar; the first time because it was in breach of planning permission laws, and the second because Project Arts’ hosting a message related to the referendum was deemed a breach of its charitable functions. Each of these legal interventions was the result of anti-choice complaints, and each reinforced the prevailing distribution of the sensible that undergirded Irish legal discourse. In an act of ‘defiant compliance’, Project Arts made a public demonstration of painting over the mural, leaving just a small part of the heart visible (Project Arts, 2018). The covering and uncovering of the mural were determined by the bounds

of the existing law, and did not articulate any new subject position within it. The appearance of the ‘part of no part’ is not contained by the binary of obedience to or transgression of prevailing law. The art which makes a ‘part of no part’ appear in public enacts the presumption of equality of each with all; of those who are excluded with those already acknowledged as belonging (Rancière, 1999b, p.17). Though their political action, the ‘part of no part’ insist on a new order in which they are as much entitled to shape the law as anyone else.

Aches’ mural and images like it, invited dissensus, disrupting the origin story of the abortion law by centring its violence, unsettling its sense of Irishness and foregrounding a woman and her mourners (Fletcher, 2018, p.241) as the proper authors of legal change. To borrow from Bonnie Honig, Savita Halappanavar is understood as a kind of ‘foreign-founder’; the foreigner who restores or re-founds an order that has lost its way (Honig, 2009). On my reading, women intervening in the space between Aches’ mural and the formal political events of voting day, are the ‘part of no part’. It does not matter, of course, that they are not themselves the artists; spectatorship is not a passive state, and their notes and tributes are acts of interpretation and translation which appropriate the ‘story’ of the mural and make it their own (Rancière, 2009, pp. 17-22). Rancière writes that, when the ‘part of no part’ appears, it ‘holds equality and its absence together, through the staging of a non-existent right’ (Rancière, 1999b, p.89). Savita and the women who acknowledge her role as a law-maker make a new space within the legal order by insisting on women’s right to author law that governs their own bodies. On the day of the vote, the prevailing rhetoric was that transformative legal change had been won through dominant rational deliberative modes of law-making. The displays at Ache’s mural challenged this. Without waiting for the validation of the referendum result, they performed as if they had already brought about a new law. This were not a unified demand to occupy an existing iteration of universal legal standing within the scope of existing naturalized, social arrangements. It was not a simple demand for inclusion in the Irish legal order, but for the terms of formation of that order to be re-made (Rancière, 1999 p. 59). However, the ‘part of no part’ does not stage a complete rupture with the existing order. For example, many engagements with Savita Halappanavar’s memory – or indeed, the appearance of predominantly White Irish women to pay tribute to her in a fashionable area of Dublin - invalidated the position of migrant abortion-seekers before Irish law (Fletcher, 2018, p.242). Migrants were denied a central place in the official referendum campaign (Butterly, 2018). As Holloway Sparks writes, moments of dissensus often blend non-radical and identifications with entirely normative ones (Sparks, 2016 at p. 429); at the same time as Savita Halappanavar is identified as maker of a new law, other Black and Brown women were denied that position.

**Comment [A18]:** insert comma after mural?

**Comment [A19]:** Remove comma after dissensus

### **The Politics of Aesthetics: Glimpsing Women’s New Legal Orders**

For Rancière, the aesthetic capacity is our ability to imagine not only a new place for ourselves within existing orders, but entirely new distributions of the sensible. Dissent expressed in art can communicate alternate legal rationalities, “new configurations of what can be seen, what can be said and what can be thought” (Rancière, 2014, p.91) This is because art is constitutively impure; as much part of everyday life as it is autonomous from it. Art, through practices of free play, can make everyday habits radically strange or foreign to themselves. Art can free legal concepts from their ordinary hierarchical orders of meaning. It can ‘suspend the ordinary coordinates of sensory experience and reframe the networks of relationships between spaces and times, subjects and objects, the common and the singular’ (Rancière, 2002). This is what Rancière means by the ‘politics of aesthetics’.

The potential for political transformation lies in the tension between life and free play. Rancière identifies four interlocking methods or strategies of art, which work on this tension (Rancière, 2004, p. 53). First, ‘archive’ or inventory models art on the practice of everyday life; this can include legal practice. Archiving law resonates with the notion of iterability; art may use artefacts from everyday life in ways that ‘did not appear to be possible; otherwise it only makes explicit a program of possibilities within the economy of the same’ (Derrida, 1992, p.341). Second, ‘play’, parody or mockery allows critique without outright denunciation. Third, ‘mystery’, collage or montage, combines heterogeneous elements – for example, traditional legal imagery and the body - in ways which draw analogies between them, and make previously imperceptible connections between them visible and legible, in brief flashes of insight. Finally, through experiencing play, archive, or mystery, the spectators may undergo what Rancière calls ‘encounter’: the emergence of a new and temporary dissensual community in the moment of spectatorship. This does not mean that art can produce new, stable communities, or that everyone who comes into contact with an art work will have the same experience of it. This encounter is fragile and precarious; it does not depend on or produce some deep common identity between spectators (Rancière, 2008). Art, to borrow a phrase from John Elderfield, “extends the thread of recognition and understanding beyond what previously was seen and known” (Elderfield et al., 2006, p.44). Although those experiences are fragile, they open up potential passages towards new forms of legal subjectivization (Rancière, 2015 p. 151).

#### A Guerilla Art Campaign in 2016

*Bodies Awakened*, designed by Cliona Ní Laoi, is a 2016 guerrilla art campaign, developed to coincide with the centenary celebrations for the 1916 proclamation of independence; understood as the foundational document of the Irish state and a key antecedent of the Constitution. *Bodies Awakened* was part of a large body of feminist art that emerged during the centenary, exploring women’s relationship to the new state (In the Shadow of the State | An Chomhairle Ealaíon, 2016; O’Toole, 2017; Dublin Dance Festival, 2016). *Bodies Awakened*

combined performance, typography, photography, online video, social media, poetry, projections, print, animation and sound to engage the question of Irish abortion law. The core of the project is a website ([www.bodiesawakened.com](http://www.bodiesawakened.com)), and a short video which takes up the whole screen, entitled 'My voice my choice'. In the video we see a woman's shoulders, neck and the lower half of her face. She is periodically plunged into darkness – as if the lights had gone out - and she recites with staccato urgency from a poem about women's abortion journeys.

WE CELEBRATE ONE HUNDRED YEARS/ OF BEING A 'FREE' STATE/ AIN'T IT GREAT?  
AND YET WE STILL CANNOT REPEAL THE EIGHTH. HOW MUCH LONGER SHALL WE  
WAIT?.... HOW CAN YOU FATHOM/ A WOMAN THAT YOU LOVE/ TO SUFFER/ TO DIE/ TO  
CRY/ BE UPSET/ REGRET/ WHAT YOU HAVE DONE IRELAND/BEGIN TO HOLD MY  
HAND...

It is not only a demand for comfort and accountability, but a demand to take women's need for legal change seriously:

WE WILL GET THE MESSAGE ACROSS/ WE DON'T HAVE TO CROSS/ NOT A FIGHT BUT A  
RIGHT/ LISTEN TO THE ARGUMENT/ AND THE LIVES LOST/ AND THE TOLL COST/ LISTEN  
TO THE WORDS/ OF THESE STRONG WOMEN/ DRIVEN TO THE SAME CAUSE/ PAUSE FOR  
A SECOND //BODIES AWAKENED.

Posters reminiscent of a branding campaign were periodically erected around Dublin city. They featured posed excerpts from the poem, and disconcerting images of posed mannequins, apparently representing the silenced bodies of women in Ireland. These challenged the official commemorative imagery proliferating in the streets and asked observers to search for and explore the website. The website encouraged users to download more posters to print and display elsewhere. As the work developed, a new iteration of *Bodies Awakened* coincided with the first Strike for Repeal on International Women's Day, 2017. The Strike for Repeal protested the Citizens' Assembly, which it presented as a delaying mechanism (Ireland Strikes for Repeal, 2017). The strike asked women to withhold their labour and to demand a referendum on the Eighth Amendment. The strike briefly brought Dublin city to a standstill by occupying O'Connell Bridge. Linking to the promised appearance of the 'part of no part' in the streets, *Bodies Awakened* urged those encountering the artwork to participate. A *Bodies Awakened* poster at that time asked women to reclaim rights, this time not through argument, but through striking:

Comment [A20]: Word choice?

STRIKE FOR PRO CHOICE/ LET YOUR ABSENCE/ BE YOUR VOICE/ STRIKE FOR THE  
BODY/ THEY HAVE CONTROL OF/ STRIKE FOR THE RIGHT/ THAT YOU WERE STOLE OF/  
STRIKEFORREPEAL//

We could read *Bodies Awakened* in terms of Rancière's montage; it 'couples what has never been coupled'. *Bodies Awakened* juxtaposes women's bodily experience, first with the city celebrating the 1916 constitution of the state, and then with the Citizens' Assembly. Each of these is an event that performs the modern Irish state's way of making law. This juxtaposition of bodies and law – phrasing or coupling them together - does not avoid friction. As a montage, following Rancière, it rips bodies and law out of the common sense spaces to which they are ordinarily allocated in everyday life, and brings them into a new, ambiguous public relationship with one another. Its insistence on embodied speech reclaims law's essential responsiveness from the state's halting engagement with abortion law reform. Its visceral urgent language breaks with modes of legal deliberation, which cuts through parliamentary prevarication and the on-going search for a consensus on how women's bodies should be regulated.

Comment [A21]: One word?

Equally it rejects the form expected of a founding proto-constitutional document such as the 1916 proclamation (Frost, 2017). It does not present any sovereign law-giver, but instead is spoken by an anonymous body and dispersed across bodies and streets. If it is a proclamation, of course, there is a measure of parody about it. It punctures the atmosphere of celebratory state sovereignty, replacing it with a testimony to women's woundedness and disappointment, and with a demand for care. It rejects the certainty, formality and stability associated with abortion law reform and replaces it with brisk choppy declarations. The result is a jarring and dissonant almost-legal text; an alternative proclamation of independence to the one commemorated by the government. Albeit jarring, this is also a productive recalibration – it makes the law intelligible in a new and striking way.

*Bodies Awakened* is art produced for encounters in the street and online, and art that directly incites participation in the circulation of a new proclamation of independence. It cannot force a rupture with the existing legal order. As a montage, it does not 'break away from the world as it is, creating alternatives detached from the ordinary' (Aghi, 2017). Nevertheless, it creates a contact zone between bodily experience, the city and the law-making institutions of the state which allows the law to be very seen differently from how it was made to appear within the prevailing distribution of the sensible.

A Witch in Venice

A second artistic attempt at re-imagining law for Repeal is Jesse Jones' *Tremble Tremble*. Produced in the midst of the Repeal movement, it represented Ireland at the Venice Biennale in 2017. *Tremble, Tremble* 'imagines a different legal order, one in which the multitude are brought together in a symbolic gigantic body, to proclaim a new law, that of In Utera Gigantae' (Jones, 2017). A multi-media installation which mixes text, sculpture, film and drama, it centres on a giant witch played by Olwen Fouéré. Jones calls the work a "bewitching" of the judicial system. At times, Fouéré as the witch towers above the audience on two screens; at times she is tiny and playful. As Murray notes, this is not an invisible woman, but one impressively made flesh (Murray, 2017).

*Tremble Tremble* can be read on one level in terms of Rancière's conception of archive. The work gestures repeatedly to legal form; legal founding text, architecture and ritual. Fouéré toys with a judge's bench and dismantles a courtroom – enacting a kind of supernatural feminine violence which refutes judgment as she says, sings or recites incantations which transmit memories of past witchcraft trials and contemporary litigation of obstetric violence. The violent oppression of women is not only a matter of origins; law is engaged in a perpetual maiming of women. Elsewhere in the room, where Fouéré moves, in an ironic nod to the struggle to repeal the Eighth Amendment, is a copy of the 1821 Act to repeal the Irish witchcraft laws. This archive is pressed into service for a re-imagined law.

As with *Bodies Awakened*, *Tremble, Tremble* is significant for the ways in which it juxtaposes law and the body. There is much law in the performance beyond the archive of women's past pain. In a gesture of jurisdiction and withdrawal, using moving curtains bearing the image of the artist's mother's hands, the work herds spectators together, enclosing them a temporary chamber where the law will be declared (Clarkson, 2012). *Tremble, Tremble* also engages in montage. The legal materials archived in the performance are held together in intimate tension with the embodied, exhausting experience of maintaining law. This is most apparent in the declaration of the law of In Utera Gigantae within the performance. For Jones it is a counter-law to the Eighth Amendment; one which was already daily enacted by women's routine refusal to continue forced pregnancy as required by Irish law. It parallels the 1916 proclamation; it is a 'language spell' that can use text to transform reality, resurrecting and enforcing a law much older than the law of the state.

As Lovett writes (Lovett, 2018), at a central moment in the performance a giant image of Fouéré's mouth appears sideways on the screen, echoing a toothed vulva, as she speaks the new law:

Before the Book of the Law was written in earthly tongues, there existed another law, passed down through generations from mother to daughter. Its letters were written in milk and spoken in whispers.

Comment [A22]: Missing word - within? in?

Kinsella observes that this is decidedly a female law, rooted in the maternal body as a site of possibility (Kinsella, 2017). The authority of this law comes, not from the state, but from a woman alien to the state and persecuted by it. Echoing, the processes of narrative and truth-telling about bodily experience which were driving the campaign for a referendum in Ireland, Fouéré insists on a law which does not reside in books or text, but in women's bodies. She tells the audience: "This brief stay [in the womb] is the only true law a human will ever know, its borders made of bones, the sound of flowing blood its only universe, its architecture made of tears and laughter." One textual iteration of this true law, printed on booklets for the audience to take, reads:

Whereas from the moment a human being begins to take its place of dwelling in the maternal belly, it lives inside a giant. The state acknowledges and affirms that the life of the giant, in virtue of her status as the origin of all life, shall be protected and vindicated before all other emerging lives she may generate. Be it ordained and enacted that the giant from which life emerges possesses a power to create and to destroy the life she carries... The state accordingly guarantees to pass no law attempting to infringe upon the fundamental rights of In Utera Gigantae (Jones 2017).<sup>4</sup>

Some of the text – "vindicate", "acknowledges", "guarantees" – echoes the language of the Eighth, but sets it in a new feminist context. During the performance, Fouéré recites the law of In Utera Gigantae in more poetic form:

With regard to the moment when a human takes its place of dwelling in the maternal belly, it lives inside a giant... This giant is the only true origin of law. She possesses the double kindness: to create or destroy the life she carries. Her tenant is only temporary, its claim of occupancy finite. Its very existence not mere life, as we the living know, but the greater possibility of being or not being.... It needs not the society of man to become manifest. It obeys the natural law of In Utera Gigantae – the world within the world made of flesh – not the state of land or sea or man or sky (Jones, 2017).

In contrast to the prevailing legal discourse around abortion and reproduction, the aesthetic of this law is not certainty, but disequilibrium. *Tremble, Tremble* resists the legal discourse which insists on state mastery and control over pregnancy and birth. Fouéré the giantess is gradually tearing the law down, simultaneously unsettling its concerns for certainty, origin and the exclusion of women. More than merely replacing the state's law with one of her own, she is exceeding state law; encouraging revolution:

---

<sup>4</sup>The author collaborated with Jones on this text

"Did I disturb ye good people? I hopes I disturb ye, I hopes I disturb ye enough to want to see this, your house, in ruins all around ye! Have you had enough yet? Or do you still have time for chaos? Hah? More?"

The expectation is that *Tremble, Tremble* can provoke a kind of Rancièrian encounter. Jones explains (Simpson, 2017):

"I had wanted for a long time to stop thinking about making art as a way of displaying things, but to think about it as a way of arranging objects almost like ruins and to see how they lie and how the relationships that they set up in the world can create a kind of alchemy."

Tina Kinsella writes that in *Tremble, Tremble*, Jones is excavating emancipatory possibilities which lie buried in the past 'inviting the viewer-as-participator to inhabit the present as a space and place from which a politics in the future can be imagined and invented' (Kinsella, 2017). The space of the performance is one where we can consider for a moment the reorientation of law towards new possibilities. Although it was politically significant for myriad reasons, the Repeal movement was always at least partly an exercise in legal mobilisation. This meant that feminist mobilisation for Repeal was always bound to a demand for formal constitutional change, and itself ultimately had to come to terms with the 'realities' of law-making which lead to the Health (Regulation of Termination of Pregnancy) Act (Enright, 2018b). In *Tremble, Tremble*, those realities and practicalities are suspended, allowing space for deeper meditation on what women's lives under law might be or might have been.

**Comment [A23]:** Take out first name or only include on first mention?

### **Conclusion: Art and the *Nomos* of Repeal**

*I'll be watching you. You won't forget us, even you try and sweeps us away.* (The witch in Jesse Jones' *Tremble, Tremble*)

Where do we go with the suggestion that we 'glimpse new worlds in the realm of the aesthetic'? (Muñoz, 2009) I have not suggested that artistic interventions changed the shape of Irish abortion law. Even if we wanted to, it would be difficult to trace a straight line of effect from the re-imagined law constructed in artistic projects to formal legal processes or outcomes (Agha, 2017 p. 161), or even to the 'changed minds' of potential voters (Rancièrè, 2014, p. 75). Transformation in the formal machinery of government always depends on the articulation of different forms of struggle and successful linkage with traditional and institutional politics (Mouffe, 2013, p.99) and that articulation cannot be guaranteed. Moreover, for Rancièrè, there is no necessary continuity between the intent of the artist, signs marked on bodies, the performance of living bodies and the



performance's effects on others (Rancière, 2008, p.11). The precise effects of an artistic intervention escape any strategy; they cannot be anticipated. Equally, the effects of appearance of the 'part of no part' 'cannot be calculated or programmed' (Rancière, 1999, p. 32). It is precisely this unpredictability that makes art political; that it rearranges the frames of our perception so that we cannot calculate what its effects will be..

However, the legal relevance of artistic interventions in Repeal is not exhausted by any reading of their impact on any positive law. For Rancière, politics can begin anywhere and the political work of art is shared with its spectators. Similarly, critical legal studies acknowledge that law's meanings are generated and reproduced in informal social spaces as much as within state institutions (Ewick & Silbey, 1998, 20; Silbey, 2005, 329).<sup>5</sup> State-made law takes some everyday power from the meanings conferred on it by popular political discourse (Delaney, War, 338). These meanings may include vernacular accounts of law-making authority, or popular senses of ourselves as legal subjects; as people whose lives are threatened, protected, legitimated, or stigmatised by law (Galanter, 1983, 127). Another term for legal meaning, in its widest sense, might be Robert Cover's term *nomos*. As Dan Matthews argues, *nomos* is not static, but is constantly remade across multiple planes; through spatial practices, lived interpretation of central principles, construction of legal narrative and more. "There are a range of normative worlds possible, each taking more or less coded, more or less institutionalized, more or less mobile and more or less exclusionary forms" (Matthews, 2017, p.32). Art that works on law, read from the perspective of *nomos*, to borrow from Karaba, becomes an 'in-law'; marked by a relation to law even if the art is not in itself a formal legal ritual or text (Karaba, 2013).

For Cover, *nomos* is a legal world which we 'inhabit'; it is a wider world of narrative, myth and desire that give law its social meaning and normative force (Cover, 1983). The legal meanings circulated in the artworks discussed in this article did not necessarily originate with the artists involved. As in any radical movement for legal change, these were produced intensively, over many years, in multiple and repeated acts of experimentation and organising in the decades prior to the referendum (Sparks, 2016, p. 431). Artistic interventions helped to stage them, and translate them into new media, giving an affective force to the 'inhabiting' of insurgent *nomos*. At the same time, they encouraged and invigorated engagement with and re-circulation of alternative legal meanings, however briefly, within a dissensual community of spectators (Agha, 2018). Whether or not such meanings are ever taken up in institutional space, we should not forget that they were (re)formed in artistic practices, and held, perhaps, in some way, for future activation.

---

<sup>5</sup> There is a wider literature in cultural legal studies on the co-implication of art and law. Some of this work is about 'law's art'; how art is judged in courtrooms or regulated in legislation (Douzinas and Nead, 1999; Finchett-Maddock, 2017) Some is about the aesthetics of law itself; asking for instance, whether law is driven by its own sense of beauty and form (Scarry, 2013, p.72; Gearey and Gardner, 2001; Riles, 2005) or considering how law is constituted by and operates through official metaphors or visual and material representations (Dahlberg, 2012; Crawley, 2015; Jeffrey, 2017; Mussawir, 2005; Goodrich, 2014) This paper does a third kind of work, extending the notion of 'art's law' (Douzinas and Nead, 1999, p.11). It examines representations of legal subjects in art on Repeal, and suggests that, that art participated in the production of shifts in legal discourse

